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ABSTRACT

This document is a favorable report to the U.S. Senate on a bill that provides for the financial security of the Student Loan Marketing Association, an act which amends the Higher Education Act of 1965. The report urges the passage of this bill which sets forth various capital levels that safeguard the government from the possibility of loss exposure in the future and which establishes procedures for restoring adequate capital levels if capital falls below any of those set forth in the act. Section I, Introduction, describes the origin, construction and rationale for the legislation. Section II provides a summary of the bill. Section III, "Background and Need for the Legislation," describes the failure of many federally insured savings and loans institutions, the requirements of the Omnibus Budget Reconciliation Act of 1990 for legislation ensuring the safety of government sponsored enterprises, and the reported strength of Sallie Mae's operations. Section IV offers the committee's view of the suitability of the bill. Section V on voting in committee, reports that the members voted unanimously for its passage. Section VI provides a cost estimate. Section VII is a regulatory impact statement. Section VIII offers a section-by-section analysis of the bill itself. The final section provides the text of the legislation. (JB)

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Calendar No. 304

102D CONGRESS
1st Session

SENATE

REPORT
102-202

ED347872

STUDENT LOAN MARKETING ASSOCIATION FINANCIAL SAFETY AND SOUNDNESS ACT OF 1991

NOVEMBER 5 (legislative day, OCTOBER 29), 1991.—Ordered to be printed

Mr. KENNEDY, from the Committee on Labor and Human Resources, submitted the following

REPORT

[To accompany S. 1915]

The Committee on Labor and Human Resources having considered an original bill (S. 1915) to amend the Higher Education Act of 1965 to provide for the financial security of the Student Loan Marketing Association, reports favorably thereon without amendment and recommends that the bill do pass.

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I. INTRODUCTION

On July 31, 1991, the Committee on Labor and Human Resources ordered reported an original bill, S. 1915, to the full Senate. The bill was reported unanimously. The bill was sponsored by Edward M. Kennedy, Chairman of the Committee and co-sponsored by Senators Pell, Hatch, and Kassebaum.

S. 1915 may be cited as the Student Loan Marketing Association Financial Safety and Soundness Act of 1991. In reporting S. 1915, the Committee proposes to assure the continued financial safety

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and soundness of the Student Loan Marketing Association ("Sallie Mae" or the "Association"), while recognizing that the corporation must be able to serve its intended public purpose—providing stability and liquidity to the Stafford Student Loan Program. The Act acknowledges Sallie Mae's current financial strength and sets forth various capital levels which safeguard the Government from the possibility of loss exposure in the future. If Sallie Mae falls below any of the capital levels, the Act establishes procedures for the Secretary of the Treasury and Sallie Mae to develop a business plan to restore an adequate capital level. The legislation was carefully constructed to maintain a balance between the desire to ensure a strong Sallie Mae and the Committee's desire to preserve student access to the credit markets for educational purposes.

II. Summary of the Bill

A. Reporting: Sallie Mae will increase its reporting of financial information to Treasury. The Secretary of the Treasury will have the authority to appoint auditors to review and monitor Sallie Mae's financial safety and soundness. If the Secretary should discover that Sallie Mae is not operating in a fiscally responsible manner, he would notify the Senate Labor and Human Resources Committee and the House Committee on Education and Labor as well as the Secretary of Education with his recommendations.

B. Minimum Capital Standard: Sallie Mae will be required to maintain a minimum capital ratio of at least 2%. Capital ration has been defined as shareholders' equity to total assets plus 50% of certain other off-balance sheet assets.

C. Safe Harbor: Sallie Mae will be deemed to have met its capital standard if it maintains a rating in one of the top full rating categories from two nationally recognized statistical credit rating organizations.

D. Failure to Meet Capital Requirements: If Sallie Mae fails to meet the minimum capital standard in any two consecutive calendar quarters, it must submit to the Treasury Department within 60 days a plan designed to satisfy the capital requirements within 36 months. The Secretary of the Treasury has 30 days in which to accept/reject the plan. If Treasury accepts the plan, Sallie Mae begins implementing it.

If Treasury rejects it, the Secretary must submit the plan, along with his reasons for disapproving it, to the Senate labor and Human resources Committee and the House Committee on Education and Labor. At the same time, the Secretary must submit an alternative capital restoration plan. The Secretary of Education will also receive a copy of these reports.

Upon receipt of the Secretary's alternative capital restoration plan, Sallie Mae must begin implementing it and, additionally, must provide a written response to the Treasury plan to the two committees within 30 days.

If the Secretary finds that Sallie Mae has not been diligently implementing the capital restoration program, it can prohibit Sallie Mae from engaging in any student loan transactions. Sallie Mae has 30 days in which to appeal such decision.

E. Critical Capital Standard: If Sallie Mae's capital ratio falls below 1 percent at the end of a calendar quarter, one of two things happens:

1. If Sallie Mae has already has already submitted a plan (due to its having fallen below the 2 percent capital ratio), it must begin implementing that plan with any modifications proposed by the Secretary of the Treasury.

2. If Sallie Mae has not submitted a plan, it must do so within 14 days. It must then implement the plan with any modifications proposed by the Secretary of the Treasury.

The same reporting requirements to Congress and the Secretary of Education, as provided when the capital ratio falls below 2 percent, are also required here.

F. Additional Reports: Sallie Mae must submit all plans (both the 2 percent and the 1 percent) and any modifications made by Treasury to CBO and GAO.

If there is a dispute about the 2 percent capital restoration plan or if the 1 percent capital restoration plan was modified by Treasury:

1. CBO and GAO have 30 days in which to report to Congress on their analysis of: Sallie Mae's financial condition; the plan and its modifications; the impact of the plan on the ability of Sallie Mae to perform its student loan responsibilities; and recommendations of ways to increase the capital ratio without jeopardizing its student aid mission; and

2. The Secretary of Education must report within 30 days regarding any administrative/legislative provision that may have contributed to the decline in the capital ratio and make recommendations for administrative/legislative changes to increase the capital ratio without jeopardizing Sallie Mae's student aid mission.

G. Confidentiality: Provisions are made to assure that GAO, CBO, the Secretary of the Treasury, and the Secretary of Education will maintain the confidentiality of information submitted with respect to Sallie Mae.

H. Definitions: Definitions are provided for "nationally recognized statistical credit rating organization", "Secretary", and "capital ratio".

III. Background and Need for the Legislation

The failures of many federally insured savings and loan institutions, and the massive Federal funding required to resolve the thrift problem, have focused attention on other areas in which the government may be exposed to financial risks. With this in mind, the Omnibus Budget Reconciliation Act of 1990 requires those congressional committees with jurisdiction over government-sponsored enterprises (GSEs) to report legislation ensuring their safety and soundness by September 15, 1991. By voice vote, S. 1915 was reported out favorably by this Committee on July 31, 1991.

Congressionally mandated reports by Treasury, the General Accounting Office (GAO), and the Congressional Budget Office (CBO) all indicate that Sallie Mae is extremely strong financially, and that it conducts its business in such a way as to limit the federal

exposure to risk to an insignificant level. As a part of its May 1991 report, the Treasury Department caused all of the GSEs to be rated by Standard & Poor's with respect to the likelihood that each GSE might not be able to meet its future obligations from its own resources. Sallie Mae was one of only two GSEs to receive Standard & Poor's highest possible rating. Notwithstanding these findings, this Act is intended to assure the continued strength of Sallie Mae's operations by making several changes to the Association's charter contained in the Higher Education Act.

IV. Explanation and Committee View

The Act would enhance existing Treasury oversight by requiring Sallie Mae to provide copies of all financial reports to Treasury, and authorizes the Treasury Secretary to hire auditors to review and monitor Sallie Mae's financial soundness.

In addition to providing fiscal disclosure to Treasury, the legislation requires Sallie Mae to maintain a 2 percent capital ratio (defined as shareholders' equity to total on-balance sheet assets plus 50 percent of certain off-balance sheet items). Capital represents the buffer element of shareholder investment, the loss of which would require additional steps to be taken to strengthen a company. Under current law, both savings and loans and national banks which hold the same assets as Sallie Mae have to maintain a 1.7 percent capital ratio. As of March 31, 1991 (the most recent quarter for which data are available), Sallie Mae had $1.129 billion in capital and a capital ratio of 2.54 percent. All of the GSE reports agree that Sallie Mae is well capitalized.

If Sallie Mae's capital ratio does not equal or exceed 2 percent for two consecutive calender quarters, the Association would have 60 days in which to submit a business plan to the Secretary of the Treasury describing how it would increase the capital ratio to 2 percent within a period not to exceed 36 months. If Treasury accepts the plan, Sallie Mae would begin implementing it.

If Treasury rejects Sallie Mae's plan, the Secretary must submit the plan within 30 days, along with his reasons for disapproving it, to the Senate Committee on Labor and Human Resources and the House Committee on Education and Labor, as well as to the Secretary of Education. In addition, the Secretary must submit an alternative proposal to satisfy the capital requirements. Upon receipt of the Secretary's capital restoration plan, Sallie Mae must begin implementing it and, additionally, must provide the two committees with a written response to the Treasury plan within 30 days. If the Secretary finds that Sallie Mae has not been diligently implementing the capital restoration program, the Secretary can prohibit Sallie Mae from engaging in any student loan transactions. Such order is subject to appeal by the Association.

Under the Act, if Sallie Mae's capital ratio falls to less than 1 percent, Sallie Mae must, within 14 days, submit a plan to the Secretary which would raise the capital ratio to 2 percent. The plan must include a timetable for implementation, not to exceed 60 months. Sallie Mae must then begin to immediately implement the plan, along with any modifications proposed by the Secretary.

To assist the committees in determining what course of action to follow, the Act provides for the submission of several studies and reports. In the event that the Secretary disagrees with any business plan proposed by Sallie Mae in connection with the requirements of this Act, or modifies such plans because capital levels have dropped below 1 percent, CBO and GAO shall submit to the committees reports which:

Indicate Sallie Mae's financial condition;

Analyze the plan being proposed by Sallie Mae and the Secretary's objection to such plan;

Analyze the impact of any plan on the federal student loan programs; and

Provide recommendations on what should be done to improve Sallie Mae's capital condition without harming the loan process.

Because a sizable reduction in Sallie Mae's capital would likely be a result of structural problems in the student loan program, and actions by Sallie Mae to improve this condition could serve to compound such problems, the Secretary of Education would report on the administrative and legislative steps that should be taken to increase Sallie Mae's capital while maintaining the viability of the student loan programs.

In the event that Sallie Mae maintains the highest or next highest full credit rating from at least two nationally recognized credit rating organizations, it would qualify for a "safe harbor." Similar to the rating already performed by Standard and Poor's as part of the 1991 Treasury report, all ratings must be without consideration of Sallie Mae's status as a GSE. It is the Committee's intent that in the event that only one agency is willing to provide such a rating, only one rating is required. Currently, Standard & Poor's has given Sallie Mae a AAA credit rating (the highest possible) without regard to its status as a GSE.

All financial information received by GAO, CBO, and the Departments of Treasury and Education from Sallie Mae in connection with the studies and reports required by the Act would receive confidential treatment. The confidentiality restrictions are substantially similar to those which the Congress imposed on the original GSE reports mandated by the Omnibus Budget Reconciliation Act of 1990.

VI. Committee Votes

No amendments were offered to this bill in Committee and the Committee voted unanimously to report the bill favorably. No roll call votes were taken pertaining to this bill.

VI. Cost Estimate

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 16, 1991.

Hon. Edward M. Kennedy,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington DC.

Dear Mr. Chairman: The Congressional Budget Office has examined the federal cost impact of an original bill, the Student Loan Marketing Association Financial Safety and Soundness Act of 1991, as ordered reported by the Senate Labor and Human Resources Committee on July 31, 1991. The bill authorizes additional activities that are estimated to cost $250,000 a year. These costs would be subject to later appropriations action.

The Secretary of the Treasury is authorized to appoint auditors to audit the Student loan marketing Association (Sallie Mae) from time to time to assess the financial safety and soundness of the Association. CBO estimates that each such audit would cost about $250,000 per year.

In addition, this bill would involve additional administrative costs for Executive and Legislative Branch agencies if Sallie Mae is unable to meet certain capital standards. These costs would include the costs of reviewing plans and reports submitted by Sallie Mae, and if the treasury Secretary did not approve the submitted plan, the development of alternative reports and plans. Under certain circumstances, reports would also be required of the Congressional Budget Office and the General Accounting Office. It is impossible to estimate the likelihood that the capital standards would not be met. In any case, the federal costs are not expected to exceed $500,000 per year.

Enactment of this bill would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Kalcevic, who can be reached at 226–2820.

Sincerely,

Robert D. Reischauer,
Director.

VII. Regulatory Impact Statement

The Committee has determined that there will be minimal increases in the regulatory burden imposed by this bill. Any regulatory impact is expected to be felt primarily by Sallie Mae and the department of the treasury.

VIII. Section-by-Section Analysis

SECTION 1. SHORT TITLE

Provides that the Act may be cited as the "Student Loan Marketing Association Financial Safety and Soundness Act of 1991."

SECTION 2. CAPITAL STANDARDS AND REPORTING

Paragraph (1) Reports by the Association

It would require the Student Loan Marketing Association ("Sallie Mae" or the "Association") to submit to the Secretary of the Treasury (the "Secretary") all of its publicly distributed periodic financial reports, and any reports on the Association prepared by nationally recognized statistical rating organizations.

Paragraph (2) Audit by Secretary

It authorizes the Secretary to appoint auditors to assess the financial safety and soundness of the Association. The Secretary is further authorized to contract for any technical assistance the auditor might require. Upon conclusion of each safety and soundness inquiry, the auditor is required to make a report of his findings to the Secretary and to Sallie Mae. This section specifically requires Sallie Mae to grant the Secretary access to its books and records and to provide the Secretary with other information which he may request.

Paragraph (3) Monitoring for Safety and Soundness

It authorizes the Secretary to monitor the financial safety and soundness of Sallie Mae. If the Secretary determines Sallie Mae is at risk, the Secretary shall notify the chairmen and ranking minority members of the House and Senate education committees and the Secretary of education, and must identify any corrective actions that should be taken.

Paragraph (4) Capital Restoration Plan

It provides for a "capital ratio" (defined in paragraph 110 to be maintained by Sallie Mae. If an audit determines that Sallie Mae's capital ratio has been less than 2 percent for two consecutive calendar quarters, the Association must submit to the Secretary, within 60 days of the audit determination, a business plan for achieving a 2 percent capital ratio within 36 months.

Paragraph (5) Association Capital Restoration Plan

If the Secretary accepts the plan to meet the capital requirements, Sallie Mae will begin implementing it. If the Secretary rejects Sallie Mae's proposal, he must submit the Association's plan, his reasons for disapproval of the plan, and an alternative capital restoration proposal to the Association, the two committees, and the Secretary of Education. Upon receipt of the alternative proposal, Sallie Mae must proceed diligently to implement it and, furthermore, must respond in writing to the Secretary's proposal to the two committees within 30 days. A copy of the Association's response must also be furnished to the Secretary of Education.

If it is found that Sallie Mae has not made a good faith effort to implement the Secretary's plan, then the Secretary of the Treasury may prohibit the Association from buying, selling, or otherwise dealing in student loans insured by the Department of Education or by a guaranty agency under part B of this title. Sallie Mae may appeal such a prohibition by filing a petition with the United

States Court of Appeals for the District of Columbia within 30 days.

Paragraph (6) Review by Congress

Congress shall have 60 days after it receives the last of the reports mandated in the previous paragraph from the Congressional Budget Office, the General Accounting Office, and the Secretary of Education in which to review them and take action. If Congress is not in session or is in recess at the time the final report is received, then the 60 days shall not begin to run until the first day in which Congress is in session. If Congress has not taken any action by the end of the 60-day period, then the Secretary's alternative business plan (proposed under paragraph 5(c)) or the Association's proposed business plan, with such modifications as have been proposed by the Secretary, shall take effect.

Paragraph (7) Critical Capital Standard

If Sallie Mae's capital ratio should fall to less than 1 percent at the end of any calendar quarter, it would be required to propose a business plan, or to amend any already proposed business plan with such changes as the Secretary determines are necessary, to reach a 2 percent capital ratio within 60 months. If no plan had yet been prepared when the critical capital level was reached, Sallie Mae would have 14 days to propose a plan and should immediately begin implementing it, with any modifications suggested by the Secretary. The chairmen and ranking minority members of the congressional authorizing committees and the Secretary of Education would receive copies of the plan.

Paragraph (8) Additional Reports

The Secretary of the Treasury would provide copies of all of the Association's proposed plans, modifications, and proposed Treasury changes to the Congressional Budget Office and the General Accounting Office. These submissions would be treated confidentially by the Congressional Budget Office and the General Accounting Office. If the Treasury and Sallie Mae fail to reach a consensus on a business plan, both the Congressional Budget Office and the General Accounting Office would report their recommendations within 30 days to the chairmen and ranking minority members of the congressional authorizing committees. These reports would include: (1) an analysis of Sallie Mae's financial condition; (2) an analysis of Sallie Mae's proposed capital restoration plan and reasons for its disapproval as well as all modifications suggested by Treasury; (3) an analysis of the impact of the plan and reasons for its disapproval and all proposed changes on the ability of the Association to fulfill its purpose and the operation of the federal student loan programs; and (4) recommendations as to how Sallie Mae can increase its capital ratio without impairing its ability to fulfill its public purpose.

In addition, if the Treasury and Sallie Mae fail to reach a consensus on a capital restoration plan, the Secretary of Education would have 30 days in which to report to the chairmen and ranking minority members of the authorizing committees with respect to: (1) legislative and regulatory provisions governing student aid

which may have contributed to the decline in Sallie Mae's capital ratio; and (2) legislative and administrative changes to the student loan program which would assist Sallie Mae in meeting its capital target while maintaining the orderly operation of the student loan programs.

Paragraph (9) Safe Harbor

Sallie Mae will be considered to meet the capital ratios described in Paragraphs (4) and (7) if it is rated in one of the top full rating categories by two nationally recognized statistical rating organizations. The rating must be without regard for Sallie Mae's status as a federally-chartered corporation and any implicit federal guarantee.

Paragraph (10) Confidentiality

This paragraph provides for confidential treatment of information provided by Sallie Mae to the Congressional Budget Office, the General Office, and the Departments of Treasury and Education.

Paragraph (11) Definitions

It defines terms used throughout section 439(r):

A "nationally recognized statistical rating organization" is a private credit rating firm registered as such with the Securities and Exchange Commission (SEC).

"Secretary" refers to the Secretary of the Treasury.

The "capital ratio" is the ratio of stockholders' equity to total assets, defined as the assets shown on the Association's balance sheet plus 50 percent of the credit equivalent amount of certain off-balance sheet items, for example letters of credit, interest rate swaps, and foreign currency swaps.

X. Changes in Existing Law

In compliance with rule XXVI paragraph 12 of the Standing Rules of the Senate, the following provides a print of the statute or the part or section thereof to be amended or replaced (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Higher Education Act of 1965

* * * * * * *

TITLE I—POSTSECONDARY PROGRAMS FOR NONTRADITIONAL STUDENTS

FINDINGS

Sec. 101. * * *

* * * * * * *

(q) Lender of Last Resort.—

* * * * * * *

(r) Safety and Soundness of Association.—

(1) REPORTS BY THE ASSOCIATION.—The Association shall promptly furnish to the Secretary copies of all—

(A) periodic financial reports publicly distributed by the Association; and

(B) reports concerning the Association that are received by the Association and prepared by nationally recognized statistical rating organizations.

(2) AUDIT BY SECRETARY.—(A) The Secretary may—

(i) appoint auditors to conduct audits of the Association from time to time to determine the condition of the Association for the purpose of assessing its financial safety and soundness;

(ii) enter into contracts to obtain the services of such technical experts as the Secretary determines necessary and appropriate to provide technical assistance to any auditor appointed under subparagraph (A).

(B) Each auditor appointed under paragraph (2)A) shall conduct an audit of the Association to the extent requested by the Secretary and shall prepare and submit a report to the Secretary concerning the results of such audit. A copy of such report shall be furnished to the Association and the Secretary of Education on the date on which it is delivered to the Secretary.

(3) MONITORING OF SAFETY AND SOUNDNESS.—The Secretary shall conduct such studies as may be necessary to monitor the financial safety and soundness of the Association. In the event that the Secretary determines that the financial safety and soundness of the Association Is at risk, the Secretary shall inform the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate, the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives and the Secretary of Education of such determination and identify any corrective actions that should be taken to ensure the safety and soundness of the Association.

(4) CAPITAL RESTORATION PLAN.—If after an audit it is determined that the capital ratio of the Association is less than 2 percent in any two consecutive calendar quarters, the Association shall, not later than 60 days after the date of such determination, submit to the Secretary a capital restoration plan (including a timetable for the implementation of such capital restoration plan of not more than 36 months) that the Association has determined will be adequate to cause the capital ratio of the Association to equal or exceed 2 percent.

(5) ASSOCIATION CAPITAL RESTORATION PLAN.—(A) The Secretary shall consult with the Association with respect to any capital restoration plan submitted under paragraph (40 and shall approve or disapprove such capital restoration plan (or a modification thereof that is accepted by the Association) not later than 30 days after the date on which such capital restoration plan is first submitted to the Secretary, except that the Association and the Secretary may mutually agree to a longer period for the consideration of such capital restoration plan.

(B) if the Secretary approves a capital restoration plan submitted under paragraph (4), the Association shall implement such capital restoration plan.

(C) If the Secretary disapproves of a capital restoration plan submitted under paragraph (4), the Secretary shall, not later than the date on which the Secretary disapproves of such capital restoration plan through the provision of written notice to the Association or the date on which the 30 day consideration period referred to in subparagraph (A) (as such period may have been extended by mutual agreement) expires, whichever is earlier, submit the capital restoration plan of the Association, in the form most recently proposed by the Association, together with a report containing the reasons for the Secretary's disapproval of such capital restoration plan and an alternative capital restoration plan to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate and to the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives. A copy of such capital restoration plan and report shall simultaneously be transmitted to the Association and the Secretary of Education by the Secretary.

(D) Upon receipt from the Secretary of a capital restoration plan and report under subparagraph (C) the Association shall proceed with diligence to implement such capital restoration plan. Not later than 30 days after receipt of such capital restoration plan and report, the Association shall submit to the Chairman and ranking minority members referred to in subparagraph (C), a written response to such capital restoration and report setting out to the maximum extent feasible the nature and extent of the agreement or the disagreement of the Association with the Secretary with respect to the capital restoration plan submitted to the Secretary and any findings of the Secretary.

(E) If the Secretary determines that the Association has failed to make a good faith effort to implement a capital restoration plan under this paragraph, the Association shall be prohibited from making advances in the security of, purchasing or repurchasing, selling or reselling, offering participations or pooled interests or otherwise dealing in student loans which are insured by the Secretary of Education under this part or by a guaranty agency. The Association may, within 30 days after a determination by the Secretary under this subparagraph, file a petition with the United States Court of Appeals for the District of Columbia Circuit for review of such determination.

(6) REVIEW BY CONGRESS.—Congress shall have 60 days after the date on which Congress receives material under this subsection from the Secretary of Education, the General Accounting Office or the Congressional Budget Office, to review such material. If Congress does not take statutory action with respect to any such material within such 60-day period, the capital restoration plan of the Secretary under paragraph (5)(C) shall take effect. If Congress is out of session when any such materials are received, such 60-day period shall begin on the first day of the next session.

(7) CRITICAL CAPITAL STANDARD.—If the capital ratio described in paragraph (4) is less than 1 percent at the end of the most recent calendar quarter of the Association and—

(A) the Association has submitted a capital restoration plan to the Secretary pursuant to paragraph (4), the Association shall implement the most recently proposed capital restoration plan with such modifications (including a timetable for the implementation of such plan of not more than 60 months) as the Secretary determines are necessary to cause such capital ratio to equal or exceed 2 percent; or

(B) the Association has not submitted a capital restoration plan to the Secreary pursuant to paragraph (4), the Association shall, not later than 154 days after the determination of such capital ratio, submit a capital restoration plan (including a timetable for the implementation of such plan of not more than 60 months) to the Secretary that the Association determines is adequate to cause such capital ratio to equal or exceed 2 percent and proceed with diligence to implement such capital restoration plan with such modifications as the Secretary determines are necessary to cause such capital ratio to equal or exceed 2 percent.

Immediately upon a determination under subparagraph (A) or (B) to implement a capital restoration plan to be implemented to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate, the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives and the Secretary of Education.

(8) ADDITIONAL REPORTS.—(A) The Secretary shall submit a copy of the Association's capital restoration plan in the form most recently submitted by the Association, including modifications of such capital restoration plan that are proposed by the Secretary, to the Congressional Budget Office and the General Accounting Office on the date on which such capital restoration plan or modifications are submitted to or received from the Secretary.

(B) Notwithstanding any other provision of law, the Congressional Budget Office and the General Accounting Office shall maintain the confidentiality of information received under subparagraph (A). If the Secretary does not approve a capital restoration plan as provided for in paragraph (5), or if a capital restoration plan is modified by the Secretary pursuant to paragraph (6)—

(i) the Congressional Budget Office and the General Accounting Office shall each, not later than 30 days after the date on which the Secretary makes the submission to the Chairmen and ranking minority members as required in paragraphs (5) and (6), prepare and submit a report to such Chairmen and ranking members that—

(I) analyzes the financial condition of the Association;

(II) analyzes the capital restoration plan and reasons for its disapproval, as contained in the Secretary's submission made pursuant to paragraph (5), or the capital

restoration plan proposed by the Association and the modifications made by the Secretary pursuant to paragraph (6);

(III) analyzes the impact of the capital restoration plan and reasons for its disapproval, as contained in the Secretary's submission made pursuant to paragraph (5), or the impact of the capital restoration plan proposed by the Association and the modifications made by the Secretary pursuant to paragraph (7), and the impact of the recommendations made pursuant to clause (IV), on—

(aa) the ability of the Association to fulfill its purpose and authorized activities as provided for in this section; and

(bb) the operation of the student loan programs; and

(IV) recommends steps that the Association should take to increase its capital ratio without impairing the ability of the Association to perform its purpose and authorized activities as provided for in this section; and

(ii) the Secretary of Education shall review the Secretary's submission required under paragraph (5) or (7) and shall, not later than 30 days after the date of such submission, submit a report to the Chairman and ranking minority member of the Committee on Labor and Human Resources of the Senate and to the Chairman and ranking minority member of the Committee on Education and Labor of the House of Representatives that—

(I) describes any administrative or legislative provisions governing the student loan programs that contributed to the decline in the Association's capital ratio; and

(II) recommend administrative and legislative changes in the student loan programs appropriate to maintain the orderly operation of such programs and to enable the Association to fulfill its purpose and authorized activities consistent with the capital ratio described in paragraph (4).

(9) SAFE HARBOR.—The Association shall be considered to be in compliance with the capital ratios described in paragraphs (4) and (7) if the Association is rated in the highest or next highest full rating categories by two nationally recognized statistical rating organizations without regard to the Association's status as a Federally chartered corporation.

(10) CONFIDENTIALITY OF RELEVANT INFORMATION.—(A) For purposes of this subsection, the Secretary of the Treasury, the Secretary of Education, the Director of the Congressional Budget Office, and the Comptroller General shall determine and maintain the confidentiality of any book, record, or information made available by the Association under this subsection in a manner consistent with the level of confidentiality established for the material by the Association.

(B) Section 552 of title 5, United States Code, shall not apply to the Department of the Treasury and the Department of Education with respect to any book, record, or information made available and determined to be confidential under this subsection.

(C) Any officer or employee of the Department of the Treasury shall be subject to the penalties set forth in section 1906 of title 18, United States Code, if—

(i) by virtue of his or her employment or official position, he or she has possession of or access to any book, record, or information made available under and determined to be confidential under this section; and

(ii) he or she discloses the material in any manner other than—

(I) to any officer or employee of the Department of the Treasury; or

(II) pursuant to the exception set forth in such section 1906 of such title.

(D) Section 203 of the Congressional Budget Act of 1974, shall not apply to the Congressional Budget Office with respect to any book, record, or information made available under this subsection and determined by the Director of the Office to be confidential under subparagraph (A).

(11) DEFINITIONS.—As used in this subsection:

(A) The term "nationally recognized statistical rating organization" means any entity recognized as such by the Division of Market Regulation of the Securities and Exchange Commission for the purposes of net capital rules applicable to brokers.

(B) The term "Secretary" unless otherwise provided means the Secretary of the Treasury.

(C) The term "capital ratio" means the ratio of total stockholders' equity, as determined under the Association's most recent quarterly consolidated balance sheet prepared in the ordinary course of its business, to the sum of—

(i) the total assets of the Association, as determined under a balance sheet prepared in the ordinary course of its business; and

(ii) 50 percent of the credit equivalent amount of the following off-balance sheet items of the Association as of the date of the preparation of such balance sheet:

(I) all financial standby letters of credit and other irrevocable guarantees of the repayment of financial obligations of others; and

(II) all interest rate contracts and exchange rate contracts, including interest exchange agreements, floor, cap and collar agreements and similar arrangements.

For purposes of this subparagraph, the calculation of the credit equivalent amount of the items described in clause (ii), the netting of such items and eliminations for the purpose of avoidance of double-counting of such items shall be made in accordance with the measures for computing credit conversion factors for off-balance sheet items for capital

maintenance purposes established for commercial banks from time to time by the Federal Reserve Board, but without regard to any riskweighting provisions in such measures.

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